

## **Committee on Resources**

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### **Witness Testimony**

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# **Testimony of Charles D. "Chuck" Collett**

## **On behalf of the**

## **National Association of Home Builders**

## **Before the U.S. House Of Representatives**

## **Resources Committee**

## **February 2, 2000**

Good morning Mr. Chairman and members of the U.S. House of Representatives Resources Committee. My name is Chuck Collett. I am Chairman of the National Association of Home Builders (NAHB) Environment Committee. I am a land developer and builder from Iowa. I appreciate the opportunity to testify before this Committee on behalf of NAHB's 200,000 members, regarding H.R. 3160, the "Common Sense Protections for Endangered Species Act."

### **Overview of H.R. 3160**

I applaud Chairman Young and other cosponsors for introducing such a comprehensive reform and reauthorization of the Endangered Species Act (ESA). It is extremely frustrating for our industry and other stakeholders that the ESA has not been reauthorized in years. We have worked year after year to have Congress address the Act's inadequacies. Our concerns deepen as each year goes by without much-needed reforms or reauthorization.

NAHB supports H.R. 3160. Overall, the bill would reform the ESA in a manner that achieves appropriate balance between species protection and the regulation of private property. While the bill offers many important reforms, I would like to focus on a few provisions that are especially significant to the building industry.

### **Improving Scientific Integrity of Listing Decisions and Procedures**

NAHB is pleased that H.R. 3160 requires better science and greater public participation in the listing process. Our industry has always been concerned that some species are listed based on emotional appeal or political concerns, without concrete scientific support to justify a finding that they are truly, in fact, endangered. Additionally, species protection without such scientific support has very real and direct impact for our members, who are typically forced to mitigate land use based on oftentimes hypothetical and speculative impacts to wildlife and habitat.

NAHB favors the bill's efforts to afford greater weight, consideration and preference to empirical data rather than projections or other extrapolations developed through modeling. A standard that allows for survey methods of collecting species and habitat data is highly desirable because it allows landowner involvement in the listing process. Also, the bill allows the Secretary to solicit and fully consider the best scientific and commercial data available concerning a species from any affected State or interested non-federal person. This provision improves the standards for identifying and collecting scientific and commercial data by allowing non-federal persons and States to provide information used in the regulatory process. It is important that data is not excluded. Rendering a decision to list a species has significant implications for private landowners, states and private citizen; therefore it is important that all data available is considered before listing a species.

As we have recently seen, States and local governments are taking their own steps though voluntary measures like candidate conservation agreements, independent of federal protections in the ESA, to ensure that species thrive. NAHB believes that State and local governments should be primarily responsible for protecting the wildlife within their jurisdictions. The benefits that accrue to species from these non-federal measures must be considered to avoid overlapping and redundant regulations from different levels of government. Accordingly, NAHB supports H.R. 3160 insofar as it would allow the Secretary to consider existing federal, State and local programs, as well as other proactive conservation measures, in evaluating whether other mechanisms are adequate to protect species without requiring an ESA listing. In short, if municipal, State and private stakeholders are already protecting a particular species, then there is no need to have that species listed under the ESA to trigger an expansive, duplicative, and onerous overlay of federal regulations.

H.R. 3160 also sets up a minimum documentation requirement for petitions and peer review of listings, delistings, designation of critical habitat, biological opinions, and mitigation criteria. States are also allowed to participate in peer review. Both of these provisions are extremely important to the building industry. The existing system lacks any sort of baseline gathering of scientific data. A listing should not be allowed to go forward if it does not meet a minimum scientific data for the listing. Further, peer review is a form of quality assurance which is so important for private landowners who will be affected by a listing. Peer review also helps to insure that the scientific community has reasonably identified and considered the best available scientific and commercial data.

NAHB has long advocated the need for economic impacts to be considered when listing a species. We firmly support the goals of species protection. However, considering the ESA's extreme prohibitions on land use, NAHB also strongly believes that in certain cases, species preservation can devastate the economic well-being of towns, States, businesses and private landowners in our country. Accordingly, NAHB supports the reform that requires the Secretary, concurrently with listing, to publish an economic analysis including a determination of the costs and benefits of the species listing on the private sector.

The provision, as is currently in the legislation, does not go far enough. H.R. 3160 simply proposes that an economic analysis is conducted at the time of listing, but it is unclear what the purpose of that analysis is. The Committee should also understand that, under current implementation of the ESA, the Federal government is supposed to consider the economic effects of critical habitat designation, but this mandate goes largely ignored. If the economic analysis provisions of H.R. 3160 are to have any meaning, the idea is that economic progress, job security, land values and tax bases should not be sacrificed on the altar of species preservation. In given situations, therefore, regulations should be loosened due to the economic impacts associated with a particular listing. H.R. 3160 should be modified accordingly. Otherwise, the economic analysis would simply serve as an academic purpose that lacks any legislative effect in determining how land is regulated.

### **Compliance with Federal Laws and Missions**

One of the building industry's biggest concerns with the ESA's implementation is that the permit process drags on and on. The current statute sets no consultation timelines, or timelines for agencies to make permit decisions. In many cases, I have heard members of the building industry say that they would rather have a permit denied in 30 days rather than no feedback or decision from the agency in a year. Time is money to the small businessmen and women who make up the building industry. The majority of our members build between 10 and 25 homes a year and cannot afford to be tied up in a permitting process that has no end. To this end, NAHB wholly supports H.R. 3160's provisions that would deem requirements met for a federal agency proposed action if consultation is not concluded by the applicable deadline. A mechanism for maintaining deadlines allows backlogs to be avoided and priority given to consultations that involve more complex negotiations.

Participation in the consultation process is extremely important to the building industry as well. Our members' projects are delayed or halted if a permit is not granted, yet ironically the Act as it is currently implemented denies private citizens their voice in the consultation process. More often than not, private landowners have no input or opportunity to review documents that impact the permit provisions and land use activities that arise from the consultation process presently in place. Thus, the building industry is pleased that H.R. 3160 allows individuals seeking authorization or funding from a federal agency to participate in the consultation process. This provision allows the private landowner to discuss the impacts of a biological opinion and any proposed alternatives with the agency, receive information on the biological opinion, receive a copy of the draft biological opinion prior to its issuance, and provide comments to the agency.

It is important that a private landowner have some certainty that if they follow through with conservation efforts in order to obtain a permit, they will not be asked for more mitigation or conservation efforts down the road. The lack of consistency and certainty in the ESA process has long concerned NAHB. Not to mention there have been no conservation incentives in the ESA. H.R. 3160 provides this certainty by requiring that the permit applicant not be subject to new or additional requirements for the protection of species identified, if the project is carried out consistently with the permit or license codifying into law the Fish and Wildlife Services' "no surprises policy." NAHB is supportive of this provision and Fish and Wildlife Service policy.

### **Permitting and Enforcement**

As mentioned above, consistency in enforcement of the ESA is a concern for the building industry. Indeed, different requirements are asked of permittees in different areas of the country in terms of conservation requirements. NAHB has testified before this very Committee on the unrealistic mitigation requirements that are asked by some state and local agencies. Our members are fully prepared and willing to pay their regulatory share to mitigate impacts to species and habitat, that truly warrant the Act's protections, that are caused by our specific projects. However, it is our industry's experience that mitigation requirements mandated as a condition to permitting are disproportionate to our project's impacts. Accordingly, NAHB is pleased that H.R. 3160 would prevent the imposition of disproportionate mitigation requirements. We applaud the bill's steps to set a cap on mitigation requirements, and to restrict mitigation for public projects to 10 percent of the total project costs. This allows an applicant to manage expectations, in terms of time and cost, in proceeding with a project.

NAHB particularly supports the provisions in H.R. 3160 that set timelines for the permit process. Specifically, the bill would require the Secretary to complete the process of, and approval or denial of, any application within 90 days of the date of submission of the application or date agreed upon by the Secretary and the applicant. The provision also directs the Secretary to respond in writing to an applicant within 30 days of receipt of the application if it is deemed incomplete. Too often, builders are left in limbo awaiting some signal from the agency on their permit only to find after months of waiting that the agency has deemed the application incomplete. There is no way of knowing why there is a delay if there is no feedback

from the agency. H.R. 3160's timeframes offer certainty in the process. Time restrictions are desperately needed so our members can make sound business decisions in managing their projects, navigating the permitting process, and making habitat mitigation commitments.

Further, NAHB supports the U.S. Fish and Wildlife Service's safe harbor agreement policy and is pleased that H.R. 3160 codifies this policy-going so far as to provide a \$10,000 grant to landowners who are willing to conserve endangered or threatened species by creating, restoring, or improving habitat or by maintaining currently unoccupied habitat for endangered species. This type of policy and grant encourages and provides incentives for conservation.

### **Recovery Planning Process**

Finally, I would like to touch on some of the recovery planning provisions in the bill. Again, NAHB is extremely pleased that the bill establishes a schedule that requires the publication of a draft recovery plan no later than 18 months after publishing a final listing rule, and that a final recovery plan be published no later than 30 months after publishing a final listing rule. Again, the building industry believes that recovery of species is of great importance and that there needs to be a plan towards recovery. These plans help private landowners understand that their projects are being regulated not just for the sake of regulation, but to accomplish the goal of species recovery through a step of actions where all stakeholders-federal, State and local governments, Native American tribes, conservation groups, and private landowners-all share equally in the burden to protect endangered species.

The building industry also believes strongly that economic and social impacts on the public and private sector must be considered in a recovery plan. Therefore, we are pleased that H.R. 3160 directs recovery teams to consider these impacts when developing potential recovery strategies. Further, the bill allows the recovery team to identify benchmarks to measure the effectiveness of the recovery plan to insure recovery results in delisting. Delisting should be a priority.

### **Conclusion**

As I mentioned earlier, NAHB strongly supports the reform provisions in H.R. 3160 and are pleased to have the opportunity to explain our interest and support of critical provisions to our industry. The building industry has asked over the years that the ESA offer some predictability and consistency in the process and H.R. 3160 offers us much of the guidance we need. However, it is important to recognize that in order for the ESA to be successful, the private landowner needs to be vested in the conservation and not punished for owning good species habitat.

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